

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:05CR3039 and
)	4:05CR3091
Plaintiff,)	
)	
vs.)	
)	MEMORANDUM
THOMAS E. MILLER,)	AND ORDER
)	
Defendant.)	

On Friday, March 20, 2009, I consulted with counsel regarding the report and recommendation (4:05CR3039, filing 133 ; 4:05CR3091, filing 93) issued by Judge Piester. In that report and recommendation, Judge Piester observed that Mr. Miller appears not to be competent to stand trial or participate in sentencing and that there is no medical or psychological intervention with a significant likelihood of ameliorating the defendant's impairments in the foreseeable future.

After considering the thoughtful views of counsel and with their agreement,

IT IS ORDERED that:

1. In the case numbered 4:05CR3039, where the plea of guilty has been accepted, the undersigned will conduct a hearing to consider whether to commit the defendant to the Attorney General for hospitalization in lieu of imprisonment. *See* 18 U.S.C. § 4244(d). Such a commitment would constitute a provisional sentence to the maximum term authorized by law for the offense for which the defendant is found guilty. *Id.*

2. The hearing called for by paragraph one of this order shall not take place before April 20, 2009.

3. Unless a motion is filed by defense counsel requesting that the defendant appear in person, the defendant will participate only by telephone.¹ The deadline for filing the motion is April 13, 2009, at 5:00 P.M. I will not accept a motion submitted personally by Mr. Miller.

3. My chambers staff shall consult and work with counsel of record and the Federal Medical Center, Butner, North Carolina, to arrange a convenient telephone hearing date. Counsel may appear in person or by telephone as they think best. That hearing will not be conducted prior to April 20, 2009. When a date and time has been arranged, I will enter an order confirming the date and time and any other pertinent arrangements. If a motion, signed by defense counsel, is filed by April 13, 2009, requesting that the defendant be allowed to appear in person, I will enter an order cancelling the telephonic hearing, and I will also schedule a new hearing date and order the government to transport the defendant to Lincoln, Nebraska for the hearing.

4. At the hearing contemplated by the foregoing, I will determine (a) whether the defendant was competent when he entered his guilty plea; (b) whether, by the preponderance of evidence, the defendant is presently suffering from a mental disease or defect and should, in lieu of a sentence of imprisonment, be committed to a suitable facility for care and treatment; and (c) such other matters as counsel may call to my attention.

5. At the time of the hearing contemplated by the foregoing, counsel for the government shall also be prepared to advise what the government proposes to do in the case number 4:05CR3091. In other words, counsel for the government should be prepared to state whether the government will continue to prosecute the case numbered 4:05CR3091.

¹I will take special measures to assure that Mr. Miller can privately consult telephonically with his counsel during the hearing.

6. Prior to April 13, 2009, defense counsel are directed to consult with Mr. Miller regarding the contents of this memorandum and order. However, that consultation need not be in person. On the contrary, counsel may consult by telephone or in writing.

7. My chambers shall provide a copy of this memorandum and order to Judge Piester, to the probation officer assigned to this matter, to the pretrial services officer assigned to this matter, and to the Mental Health Department, Federal Medical Center, Butner, North Carolina.

8. Should counsel have questions, they may initiate a telephone conference with the undersigned and opposing counsel. Counsel may arrange that conference by contacting my judicial assistant, Kris Leininger, at 402-437-1640.

March 23, 2009.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge